

84-141

Office - Supreme Court, U.S.
FILED

JUL 9 1984

ALEXANDER L. STEVAS,
CLERK

NUMBER:

IN THE SUPREME COURT
OF THE
UNITED STATES

Howard Scott, In derivative Action on behalf of
LAVENDER HOUSE, INC., a public stock
company, his wife Shirley and himself

Henry Yarbrough, In derivative Action on
behalf of the public company, LAVENDER
HOUSE, INC.

Howard L. Jenkins, In derivative Action on
behalf of the public company, LAVENDER
HOUSE, INC.

Oliver A. Darden, In derivative Action on
behalf of the public company, LAVENDER
HOUSE, INC.

Petitioners

vs.

Small Business Administration

Respondent

October Term
1984

On Appeal from the United States Court of Appeals
For the Third Circuit in Cases No. 83-1546 and 83-1572

Appendix attached herein

PETITION FOR WRIT OF CERTIORARI

Henry Yarbrough
P.O. Box 27486
6615 Blakemore Street
Philadelphia, Pennsylvania 19150

Howard L. Jenkins
827 South St. Bernard Street
Philadelphia, Pennsylvania 19143

QUESTIONS PRESENTED FOR REVIEW

- I. WHETHER AN EX PARTE TRIAL IN A UNITED STATES DISTRICT COURT IS A VIOLATION OF CONSTITUTIONAL DUE PROCESS AND THE CIVIL RIGHTS OF THE ABSENT PARTIES.
- II. WHETHER THERE IS A RIGHT FOR SHAREHOLDER MEMBERS OF A DERIVATIVE ACTION UNDER RULE 23.1., FRCP, TO BE NOTIFIED IF THEIR ACTION IS TO BE DISMISSED OR COMPROMISED ESPECIALLY WHERE THE DERIVATIVE ACTION PROVISION IS USED TO DELIVER A BINDING JUDGMENT AGAINST THE ABSENT MEMBERS.
- III. WHETHER A LAYMAN NON-LAWYER PRO SE LITIGATION IN A UNITED STATES DISTRICT COURT IS BINDING ON UN-NOTIFIED OTHER PARTIES.

PARTIES TO THIS PROCEEDING

The caption of the case in this Court contains the names of all the parties.

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J U R I S D I C T I O N

Jurisdiction in this Court is provided for under the provision of Title 28, Section 1254, United States Code, for the review of final decisions of United States Court's of Appeals.

The United States Court of Appeals for the Third Circuit affirmed the judgment of the district court against the petitioners on April 6, 1984. App. page 6-A.

The United States Court of Appeals for the Third Circuit further denied the petitioners petition for a rehearing on April 30, 1984. App. page 5-A.

A stay was granted petitioners to July 14, 1984 by the Court of Appeals to permit time for the petitioners to file this petition for writ of certiorari. App. page 7-A.

FEDERAL LAWS OF THIS CASE

1. V Amendment, Constitution of the United States
2. Rule 23.1., Federal Rules of Civil Procedure
3. Title 28, Section 1654, United States Code
4. Civil Right Acts of 1870 and 1871

STATEMENT OF THE CASE

The petitioners Yarbrough and Jenkins for over 12 years have been stockholders of the public company, Lavender House, Inc., the derivative action company in this case.

As stockholder members, Yarbrough and Jenkins brought the instant derivative action on behalf of Lavender House on April 1, 1983 to secure a due process constitutional trial; to secure their rights as stockholders to receive notification under Rule 23.1., Federal Rules of Civil Procedure, and, to have set aside binding judgments against Lavender House as handed down by the district court through the inexperience pro se court action by a layman.

The district court did have and did permit an unconstitutional Ex Parte trial for the benefit and favor of the respondent. Only the respondent's attorneys and the respondent's witnesses were present and did give arguments and testimony to the court at this trial. No attorney or anyone else was present at this trial to give the valid defenses of the petitioner's



public company, Lavender House; but after the respondent's one side only trial, the district court handed down a damages judgment of \$416,322.79 against the petitioner's company, Lavender House. Such an Ex Parte and one side only trial is clearly a violation of due process, 5th Amendment, Constitution of the United States.

Rule 23.1., Federal Rules of Civil Procedure, provides that a derivative action may not proceed if it appears the "plaintiff does not fairly and adequately represent the interest of the shareholder". Howard Scott the layman who brought the pro se court action could not have "fairly and adequately" represented Lavender House or any of the shareholder members. Scott's action under Rule 23.1. should have not been maintained by the court.

Further, Rule 23.1., FRCP, provides additionally that if a derivative action is to be dismissed or compromised, then notification to this effect must be sent to all the shareholder members of the action. The district court did compromise this derivative action by the granting of respondent a summary judgment, but notification of the intended compromise was

not sent to Yarbrough nor Jenkins or any other member of the action.

Title 28, Section 1654, United States Code, provides that a person may represent himself. The district court's judgments binding others to the pro se court action of a layman, Howard Scott in this case, should be forever barred. Petitioner's company, Lavender House, should be relieved of judgments caused by the court action of the layman, Scott.

By Order of April 20, 1983, the district court dismissed the Yarbrough and Jenkins signed complaint of April 1, 1983.

Ex Parte trial in a United States District Court, failure of stockholders in a derivative action to receive notification, and binding judgments on others brought by the action of a layman have never happened before in any United States Court. So Yarbrough filed his notice of appeal and docketed in the U. S. Court of Appeals on July 13, 1983 as appeal No. 83-1546. Then Jenkins followed with his

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CHICAGO, ILL. 60607
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1000 S. EAST ASIAN
BUILDING
CHICAGO, ILL. 60607
U.S.A.

appeal on July 29, 1983 as appeal No. 83-1572.

The United States Court of Appeals affirmed the district court's judgment against the Yarbrough and Jenkins actions on April 6, 1984. Yarbrough and Jenkins filed petition for rehearing, but rehearing was denied on April 30, 1984.

Now Yarbrough and Jenkins brings before this Court the extraordinarily important questions of their respective appeals as to whether an Ex Parte trial is a violation of their due process constitutional rights, whether Yarbrough and Jenkins and other members of the derivative action should have been notified under Rule 23.1., FRCP, before the district court compromised said derivative action, and, whether the court judgments on others are binding from the pro se court action of a layman.

ARGUMENTS

I. WHETHER AN EX PARTE TRIAL IN A UNITED STATES DISTRICT COURT IS A VIOLATION OF CONSTITUTIONAL DUE PROCESS AND THE CIVIL RIGHTS OF THE ABSENT PARTIES.

The official and documented proof is here in the Appendix at page 1-A, Civil Dockets 97, 98 and 99, that the United States District Court did hold an Ex Parte trial for the benefit and favor to the respondent Small Business Administration.

After this trial the district court handed down a \$416,322.79 damages judgment to the respondent favor and against the absent party, the public company Lavender House. App. page 1-A, Docket 99.

The record shows clearly at docket No. 97, App. p. 1-A, that no attorney or any one else was present to give the valid defenses of Lavender House. The docket states that Scott, the layman who brought the derivative action was not present. Only the respondent's attorneys and respondent's witnesses were present to and did give arguments and testimony to the Court. App. page 1-A, dockets 97, 98 and 99.

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A one side only or ex parte trial should never happen in a United States Court. Such a trial is unconstitutional and a violation of the absent parties due process as provided for in the 5th & 14th Amendment, Constitution of the United States. App. page 4-A.

Now Yarbrough and Jenkins as public stockholders of the public company Lavender House respectfully requests of this Honorable Court to grant this petition and decide for all times that a one side only trial is unconstitutional.

II. WHETHER THERE IS A RIGHT FOR SHAREHOLDER MEMBERS OF A DERIVATIVE ACTION UNDER RULE 23.1., FRCP, TO BE NOTIFIED IF THEIR ACTION IS TO BE DISMISSED OR COMPROMISED ESPECIALLY WHERE THE DERIVATIVE ACTION PROVISION IS USED TO DELIVER A BINDING JUDGMENT AGAINST THE ABSENT MEMBERS.

Rule 23.1., Federal Rules of Civil Procedure, a copy of which is attached to the appendix at page 3-A, provides that a derivative action may not proceed if it appears the "plaintiff does not fairly and adequately represent the interest of the shareholders".

The first part of the report is devoted to a description of the work done during the year. It is divided into two main sections, the first of which deals with the work done in the laboratory and the second with the work done in the field. The first section is divided into three parts, the first of which deals with the work done in the laboratory and the second with the work done in the field. The second section is divided into two parts, the first of which deals with the work done in the laboratory and the second with the work done in the field.

The second part of the report is devoted to a description of the results of the work done during the year. It is divided into two main sections, the first of which deals with the results of the work done in the laboratory and the second with the results of the work done in the field. The first section is divided into three parts, the first of which deals with the results of the work done in the laboratory and the second with the results of the work done in the field. The second section is divided into two parts, the first of which deals with the results of the work done in the laboratory and the second with the results of the work done in the field.

Howard Scott, the plaintiff in the case Jenkins and Yarbrough now complains of, is NOT an attorney. Scott could not have adequately represented Lavender House or any of the shareholder members. Section 1654, Title 28, United States Code, app. p. 3-A, provides that a person may represent himself in a United States Court; so Scott could only have represented himself.

The district court erred by permitting the derivative action to proceed. The pro se action of Scott is now lawfully binding on petitioners and all other absent members of this derivative action. There was no due process in the light of the 5th Amendment, U. S. Constitution or of subject Rule 23.1. The absent members civil and property rights were also disregarded in violation of the Civil Right Acts of 1870 and 1871.

Rule 23.1., FRCP, provided in the appendix at page 3-A, additionally states that if a derivative action is to be dismissed or compromised, then notification to this effect must be delivered to all shareholder members of the action. No Notification was ever sent to petitioners or any other member. Yet, the action was compromised by the district court granting a

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Received of the Treasurer of the
County of ... the sum of ...
for ...

Witness my hand and seal this ... day of ...
1871

By ...
County Clerk

summary judgment to respondent on November 14, 1979. A copy of the judgment is in the appendix at page 2-A.

The summary judgment is now binding on petitioners and other shareholder members by the operation of subject Rule 23.1. But in turn, none of the shareholder members received their benefit from the intention of Rule 23.1 for notification. Each member could have then provided for his or her own representation. Petitioners then ask the Court to grant certiorari so that this important question of shareholder rights under Rule 23.1. may for all times be decided.

III. WHETHER A LAYMAN NON-LAWYER PRO SE LITIGATION IN A UNITED STATES DISTRICT COURT IS BINDING ON UN-NOTIFIED OTHER PARTIES.

The civil docket in the appendix at page A-1 shows that Howard Scott brought the derivative action on behalf of the public company Lavender House. Scott is not an attorney and he is not a member of the bar of any Court. But Scott's court action has resulted in binding judgments on Lavender House. Title 28, Section 1654, United States

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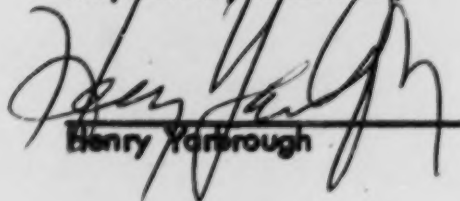
Code, app. p. 3-A, provides that one may represent himself. Judgments caused by Scott's pro se action on Lavender House should be disallowed. Petitioners therefore requests of this Court to grant this petition and decide if a layman may represent parties other than himself in the light of Title 28 Section 1654, United States Code.

The first of these is the fact that the
 system is not a simple one. It is a
 complex one, and it is not possible to
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 system of many parts, and it is not
 possible to describe it in a few words.
 It is a system of many parts, and it is
 not possible to describe it in a few words.
 It is a system of many parts, and it is
 not possible to describe it in a few words.

CONCLUSION

In consideration of the facts and the law cited above, the petitioners most respectfully requests that this petition for certiorari be granted so that the exceptionally important questions of whether an Ex Parte trial for and to the benefit of one side only is constitutional; whether the provision of Rule 23.1., FRCP, shall apply to Yarbrough and Jenkins and the other shareholder members of the public company, Lavender House, Inc., and whether judgments are binding on others when the judgments are the results of a layman's pro se court's litigation.

Respectfully submitted,



Henry Yarbrough

NUMBER:

IN THE SUPREME COURT
OF THE
UNITED STATES

Howard Scott, In derivative Action on behalf of
LAVENDER HOUSE, INC., a public stock
company, his wife Shirley and himself

Henry Yarbrough, In derivative Action on
behalf of the public company, LAVENDER
HOUSE, INC.

Howard L. Jenkins, In derivative Action on
behalf of the public company, LAVENDER
HOUSE, INC.

Oliver A. Darden, In derivative Action on
behalf of the public company, LAVENDER
HOUSE, INC.

Petitioners

vs.

Small Business Administration

Respondent

On Appeal from the United States Court of Appeals
For the Third Circuit in Cases No. 83-1546 and 83-1572

Appendix attached herein

APPENDIX TO PETITION FOR CERTIORARI

Henry Yarbrough
P.O. Box 27486
6615 Blakemore Street
Philadelphia, Pennsylvania 19150

Howard L. Jenkins
827 South St. Bernard Street
Philadelphia, Pennsylvania 19143

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TABLE I. CONTINUED

10. A series of 100 measurements of the time interval between the occurrence of two successive events, each event being defined as a certain definite state of the system, was obtained. The results are given in Table I.	100
11. A series of 100 measurements of the time interval between the occurrence of two successive events, each event being defined as a certain definite state of the system, was obtained. The results are given in Table I.	100
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16. A series of 100 measurements of the time interval between the occurrence of two successive events, each event being defined as a certain definite state of the system, was obtained. The results are given in Table I.	100
17. A series of 100 measurements of the time interval between the occurrence of two successive events, each event being defined as a certain definite state of the system, was obtained. The results are given in Table I.	100
18. A series of 100 measurements of the time interval between the occurrence of two successive events, each event being defined as a certain definite state of the system, was obtained. The results are given in Table I.	100
19. A series of 100 measurements of the time interval between the occurrence of two successive events, each event being defined as a certain definite state of the system, was obtained. The results are given in Table I.	100
20. A series of 100 measurements of the time interval between the occurrence of two successive events, each event being defined as a certain definite state of the system, was obtained. The results are given in Table I.	100

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL DOCKET NO: 78-62

Plaintiff

Scott, Howard, in Derivative
Action on behalf of Lavender
House, Inc., and on behalf of
his wife Shirley & himself

Defendant

Small Business Administration

vs.

ATTORNEYS

p.p.

Robert DeLuca, USA
William McGettigan, ASUA

Date	NR.	PROCEEDINGS
1980	*	*
May 5	97	Civil non jury trial on counterclaim of 4/28/80: Mr. Stout moves for Ms Yance's admission pro hac vice - granted; Mr. Scott not present; S.B.A.'s witnesses sworn filed.
May 5	98	Civil non jury trial on counterclaim of 4/29/80: Ms Yance makes closing argument; Court makes findings of fact; Court finds in favor of deft. on counterclaim and awards damages in total amount of \$408,483.93 with interest as of 12/11/79, deft. to submit final figure showing interest to date, filed.
May 6	99	ORDER DATED 4/29/80 THAT JUDGMENT BE ENTERED ON THE COUNTERCLAIM IN FAVOR OF SMALL BUSINESS ADMINISTRATION AND AGAINST HOWARD SCOTT, SHIRLEY SCOTT AND LAVENDER HOUSE, INC., JOINTLY AND SEVERALLY IN THE AMOUNT OF \$416,322.79, FILED. 5/7/80 entered & copies mailed.

*

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UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF THE CHIEF OF BUREAU OF PLANT INDUSTRY

OFFICE OF THE CHIEF OF BUREAU OF PLANT INDUSTRY

Washington, D. C.

June 1, 1914

Dear Sir:

I have the honor to acknowledge the receipt of your letter of May 28, 1914, in relation to the matter of the proposed extension of the term of the contract for the purchase of the land for the establishment of a plant industry in the State of California.

I am sorry to hear that you are unable to accept the offer made by the Government. I am sure that the Government will be able to find other land for the establishment of a plant industry in the State of California.

I am, Sir, very respectfully,
Yours very truly,
C. D. Lusk,
Chief of Bureau of Plant Industry.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HOWARD SCOTT, et al. : CIVIL ACTION
vs :
SMALL BUSINESS ADMINISTRATION : NO. 78-62

O R D E R

AND NOW, this 9th day of NOVEMBER, 1979, it is
hereby

ORDERED that the plaintiff's motion to amend the
complaint be and the same is hereby DENIED.

IT IS FURTHER ORDERED that the defendant's motion
for summary judgment be and the same is hereby GRANTED
and JUDGMENT is entered in favor of the defendant and
against the plaintiff.

BY THE COURT:

s/ Joseph L. McGlynn, Jr
JOSEPH L. MC GLYNN, JR J.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN DOE, Plaintiff,
vs.
JANE SMITH, Defendant.

Case No. 123456789

FILED

CLERK OF COURT

U.S. DISTRICT COURT

WASHINGTON, D.C.

DECEMBER 15, 2024

BY: [Signature]

U.S. DISTRICT COURT

WASHINGTON, D.C.

DECEMBER 15, 2024

JOHN DOE, Plaintiff,
vs.
JANE SMITH, Defendant.

**RULE 23.1. DERIVATIVE ACTIONS BY SHAREHOLDERS,
FEDERAL RULES OF CIVIL PROCEDURE, IS AS FOLLOWS:**

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege (1) that the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law, and (2) that the action is not a collusive one to confer jurisdiction on a court of the United States which it would not otherwise have.

The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort.

The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association.

The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

TITLE 28, SECTION 1654, UNITED STATES CODE, appearance personally or by counsel is as follows:

In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

V AMENDMENT, CONSTITUTION OF THE UNITED STATES,
is as follows:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

CONSTITUTION OF THE UNITED STATES

The Constitution of the United States is the supreme law of the land. It is the foundation of the government and the rights of the people. It is the document that defines the structure and powers of the federal government and the states. It is the document that guarantees the rights of the people and the principles of democracy. It is the document that has shaped the history of the United States and the lives of its citizens. It is the document that we all should know and understand.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 83-1546

No. 83-1572

HOWARD SCOTT, Derivative Action on behalf
of the public company Lavender House, Inc.,
his wife Shirley, and, himself

v.

SMALL BUSINESS ADMINISTRATION, an Independent Agency
of the United States of America

Henry Yarbrough, a derivative action plaintiff
Appellant in No. 83-1546

Howard L. Jenkins and Howard Scott
Appellants in No. 83-1572

(Civil No. 83-1553 - E.D. Pa.)

SUR PETITION FOR REHEARING

PRESENT: SEITZ, Chief Judge, Aldisert, Adams, Gibbons,
Hunter, Weis, Garth, Higginbotham, Sloviter, and Rosenn,
Circuit Judges

The petition for rehearing filed by Appellants Yarbrough and Jenkins in the above entitled cases having been submitted to the Judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court

s/ Seitz

DATED: April 30, 1984

Collins J. Seitz
Chief Judge

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

FILE NO. 100-1000

FILE NO. 100-1000

APPEAL FROM THE
DISTRICT COURT OF THE
SOUTHERN DISTRICT OF NEW YORK

APPEAL FROM THE
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APPEAL FROM THE
DISTRICT COURT OF THE
SOUTHERN DISTRICT OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

vs.
JOHN J. BROWN, Defendant

Plaintiff

The People of the State of New York, by and through the
Attorney General, do hereby certify that the within
document is a true and correct copy of the original
document as the same appears in the files of the
Attorney General, and that the same is a true and
correct copy of the original document as the same
appears in the files of the Attorney General.

By the Court

W. J. BROWN

CLERK OF COURT

DATE: April 10, 1900

CLERK OF COURT

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 83-1572

HOWARD SCOTT, Derivative Action on behalf
of the public company, Lavender House, Inc.,
his wife Shirley, and, himself

v.

SMALL BUSINESS ADMINISTRATION, an Independent Agency
of the United States of America

Howard L. Jenkins and Howard Scott, Appellants

(Civil No. 83-1553 - E. D. Pa.)

DISTRICT JUDGE: Honorable Norma L. Shapiro

Submitted Under Third Circuit Rule 12(6)
March 23, 1984

BEFORE: SEITZ, Chief Judge, BECKER, and ROSENN,
Circuit Judges

JUDGMENT ORDER

After consideration of the contentions raised by
appellants, it is

ADJUDGED AND ORDERED that the judgment of the
district court be and is hereby affirmed.

Costs taxed against appellants.

By the Court

s/ Seitz

Chief Judge

ATTEST:

s/ Sally Mrvos

Sally Mrvos, Clerk

DATED: Apr 6 1984

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-127

ROBERT J. ROY, Plaintiff,
vs.
The United States, Defendant.

ON PETITION FOR WRIT OF HABEAS CORPUS
AND FOR WRIT OF HABEAS AD ADAMUS

FILED - 12-1-12

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Before the Honorable Judge [Name]
[Date]

ROBERT J. ROY, Plaintiff,
vs.
The United States, Defendant.

MEMORANDUM

A writ of habeas corpus is a writ that is issued by a court to release a person who is being held in custody. It is a writ that is issued by a court to release a person who is being held in custody. It is a writ that is issued by a court to release a person who is being held in custody.

For the Court

[Signature]
[Name]

2012

By Sally Moore

Deputy Clerk

DATED: Jan 2, 2012

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 83-1546 & 83-1572

SCOTT, HOWARD, etc.

vs

SMALL BUSINESS ADMINISTRATION, etc

Henry Yarbrough, Appellant in No. 83-1546

Howard L. Jenkins, et al., Appellants in No. 83-1572

Pursuant to Rule 41(b) of the Federal Rules of Appellate Procedure, it is O R D E R E D that issuance of the certified Judgment in lieu of formal mandate in the above cause be, and it is hereby stayed until July 14, 1984.

s/Seitz
Chief Circuit Judge

Dated: May 21, 1984